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of construction would be disregarding that which is practically, if not entirely, conclusive."

Malicious Prosecution—Effect of Conviction and Reversal.—In *Kennedy v. Burbridge*, 183 Pac. 325, the Supreme Court of Utah held that a judgment of conviction followed by a reversal, when offered as evidence in a case for malicious prosecution, is at least prima facie evidence of probable cause, but is not evidence of probable cause, where procured by fraud, perjury, or other undue or unfair means employed by the defendant, or where based upon testimony which was untrue, regardless of whether or not such testimony was given unlawfully and corruptly.

The court said: "That the authorities are not in complete harmony will be found upon the most casual examination. The Minnesota court, in *Skeffington v. Eylward* (97 Minn. 244, 105 N. W. 638), divides the cases into three classes: (1) Those which hold that a conviction is conclusive evidence of probable cause, notwithstanding a reversal on appeal; (2) those in which it is held that a judgment of conviction, notwithstanding a reversal, can only be impeached by evidence that it was procured by fraud or perjury, and (3) those which hold that a judgment of conviction when reversed on appeal is only prima facie evidence which may be rebutted by any competent evidence which clearly overcomes the presumption arising from the effect of the conviction in the first instance. The writer, after a somewhat careful review of a large number of cases, is of the opinion that the above classification by the Minnesota court is substantially correct. Conceding this to be true, there is no escape from the conclusion that a judgment of conviction, followed by a reversal, when offered as evidence in a case for malicious prosecution, is at least prima facie evidence of probable cause for the prosecution. It follows, therefore, that where the complaint itself in an action for malicious prosecution shows that plaintiff was convicted in the proceeding complained of, notwithstanding a reversal afterwards on appeal, the complaint fails to state a cause of action unless it goes farther and alleges some fact or facts the legal effect of which is to impeach the validity of the judgment and render it worthless as evidence of probable cause. The fact or facts so alleged should be to the effect that the judgment of conviction relied on as proof of probable cause was procured by fraud, perjury or other undue or unfair means employed by the defendant.

"All of the authorities which we have examined permit evidence of conviction for the purpose of proving probable cause. This is so because when one party is charged with prosecuting another without probable cause the most satisfactory evidence that there was probable cause would be a judgment of conviction, fairly obtained

before an unbiased court or jury. This is so manifest as in our judgment to be uncontrovertible. But suppose the judgment of conviction was procured by perjury or fraud, or by any means which show that the judgment is invalid, unauthorized and of no efficacy whatever as evidence of probable cause. Could it then be contended that such a judgment has probative value to establish probable cause? We have no hesitancy in holding that in such a case the probative effect of the judgment is entirely overcome, and that it stands in the case the same as if it had never been rendered. Suppose that the judgment was procured by testimony that was admittedly false and untrue. Should such a judgment in a case of this kind be given effect as proof of probable cause? Clearly not. And even though the testimony was not given wilfully and corruptly so as to make it a case of perjury as known to the criminal law, nevertheless its probative effect is just the same. It deceived and misled the court and caused him to enter a judgment which, for the purpose of evidence in a case of this kind, should have no effect whatever. In *Nehr v. Dobbs* (47 Neb., at p. 870, 66 N. W., at p. 866) the court said: 'The reason that a conviction procured by perjury is not proof of the existence of probable cause for the prosecution is that the false testimony deceived the trial court so that the inference naturally drawn from a judgment of that court is no longer a reasonable inference.'

"This states the proposition in a nutshell. It is the falsity of the testimony and its tendency to deceive and mislead the court that vitiates the judgment and renders it ineffective when offered as evidence of probable cause, whether the testimony was wilful and corrupt or given honestly and in good faith."